

Bridget Hill, WSB #6-3616
 Attorney General
 Jay A. Jerde, WSB #6-2773
 Special Assistant Attorney General
 Travis Jordan, WSB #7-5721
 Senior Assistant Attorney General
 Wyoming Attorney General's Office
 109 State Capitol
 Cheyenne, WY 82002
 (307) 777-7895
 bridget.hill@wyo.gov
 jay.jerde@wyo.gov
 travis.jordan@wyo.gov

Counsel for Petitioner, State of Wyoming

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING,)	
)	
Petitioner,)	
)	
v.)	Case No. _____
)	
DEB HAALAND, in her official capacity)	
as Secretary of the United States Department)	PETITION FOR REVIEW OF
of the Interior; MARTHA WILLIAMS, in her)	FINAL AGENCY ACTION
official capacity as Director of the)	UNLAWFULLY WITHHELD
United States Fish and Wildlife Service,)	
)	
Respondents.)	

Petitioner, the State of Wyoming, through undersigned counsel, hereby petitions this Court to review the final agency action unlawfully withheld by Secretary of the United States Department of the Interior Deb Haaland and United States Fish and Wildlife Service

Director Martha Williams (collectively, “the Federal Respondents”) because they have failed to make a timely final determination on the merits of the *Petition to Establish the Greater Yellowstone Ecosystem (GYE) Grizzly Bear (Ursus arctos horribilis) Distinct Population Segment (DPS) and Remove the GYE Grizzly Bear DPS from the Federal List of Endangered and Threatened Wildlife* (petition to delist) that the State of Wyoming submitted to them in January 2022. In support of this Petition for Review, the State of Wyoming alleges as follows:

1. The Petitioner in this case is the State of Wyoming.
2. The Respondents in this case are Deb Haaland, in her official capacity as Secretary of the United States Department of the Interior, and Martha Williams, in her official capacity as Director of the United States Fish and Wildlife Service.
3. The unlawfully withheld final agency action to be reviewed in this case is the Federal Respondents’ failure to make a final determination on the merits of the petition to delist that the State submitted to them on or about January 10, 2022. The Federal Respondents acknowledged that they received the State’s petition to delist on January 21, 2022. (*See* <https://ecos.fws.gov/ecp/report/table/petitions-received.html>).
4. This Court has jurisdiction to review the unlawfully withheld final agency action at issue in this case under 28 U.S.C. § 1331, 5 U.S.C. §§ 701-706, and U.S.D.C.L.R. 83.6. Sovereign immunity to the claim asserted in this Petition for Review is waived by 5 U.S.C. § 702 and 16 U.S.C. § 1540(g). This Petition for Review is filed within six years of the final agency action unlawfully withheld as required by 28 U.S.C. § 2401(a).

5. In compliance with 16 U.S.C. § 1540(g)(2)(C), the State of Wyoming submitted a written notice of intent to file suit to the Federal Respondents on March 8, 2023. (*See* Attach. A). Secretary Haaland received the written notice of intent to sue on March 16, 2023. (*See* Attach. B). Director Williams received the written notice of intent to sue on March 20, 2023. *Id.*

6. The sixty day notice period required by 16 U.S.C. § 1540(g)(2)(C) expired on or about May 20, 2023. Therefore, as of the date of this Petition for Review, more than sixty days have passed since the Federal Respondents received the written notice of intent to sue from the State of Wyoming.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e). Each of the above-named Respondents is an officer of the United States acting in her official capacity and the State “resides” in this judicial district for purposes of 28 U.S.C. § 1391(e).

8. The Federal Respondents are unlawfully withholding a final agency action because they have not performed a non-discretionary duty required of them by 16 U.S.C. § 1533(b)(3). Specifically:

a. The Federal Respondents have not made a final determination on the State’s petition to delist within the time frame prescribed in § 1533(b)(3)(B).

b. Under § 1533(b)(3)(B), the Service was required to make a final determination on the merits of the petition to delist within twelve months after receiving the petition.

c. The Federal Respondents received the State’s petition to delist on January 21, 2022.

d. The twelve month deadline for the Federal Respondents to make a final determination on the State’s petition to delist was January 21, 2023.

e. The twelve month deadline in § 1533(b)(3)(B) “is a hard deadline calculated from the date of the petition filing,” not from the date of a positive initial finding on the petition. *Friends of Animals v. Ashe*, 808 F.3d 900, 902 (D.C. Cir. 2015); *see also Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1175 (9th Cir. 2002) (explaining that § 1533(b)(3)(B) “imposes a firm twelve-month deadline” on the Service to make a final determination on the merits of a petition). “The ESA permits no exceptions to this 12–month mandatory deadline.” *Ctr. for Biological Diversity v. Haaland*, No. 20-573 (EGS), 2023 WL 2401662, at *2 (D.D.C. March 8, 2023) (citation omitted);

f. On February 6, 2023, the Federal Respondents published a positive 90 day finding on the State’s petition to delist. (*See Attach. C*).

g. In the 90 day finding, the Federal Respondents announced that they planned to initiate a status review to determine if the State’s petition to delist should be granted and stated that they would issue a 12 month petition finding based on that status review. (*See Attach. C at 1*).

h. In a letter dated May 8, 2023, the Assistant Director for Ecological Services for the U.S. Fish and Wildlife Service stated that the Service has initiated a status review in response to the State’s petition to delist. (*Attach. D at 1*).

i. As of the date of this Petition for Review, the Federal Respondents have not made a final determination on the State's petition to delist.

j. By not making a final determination on the merits of the State's petition to delist by January 21, 2023, the Federal Respondents failed to perform a non-discretionary duty required by § 1533(b)(3)(B). As of the date of this Petition for Review, they still have not made a final determination on the State's petition to delist and therefore are unlawfully withholding a statutorily required final agency action.

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9. The State respectfully asks this Court to:

- a. Declare that the Federal Respondents have violated § 1533(b)(3)(B) because they did not make a final determination on the State's petition to delist within the statutorily prescribed 12 month time period;
- b. Order the Federal Respondents to make a final determination on the State's petition to delist no later than one month after this Court issues the order declaring that the Federal Respondents have violated § 1533(b)(3)(B);
- c. Grant the State such further and additional relief as this Court may deem just and proper.

Submitted this 24th day of May 2023.

Attorneys for Petitioner State of Wyoming

/s/ Bridget Hill

Bridget Hill, WSB #6-3616
Attorney General

/s/ Jay Jerde

Jay Jerde, WSB #6-2773
Special Assistant Attorney General

/s/ Travis Jordan

Travis Jordan, WSB #7-5721
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
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bridget.hill@wyo.gov
jay.jerde@wyo.gov
travis.jordan@wyo.gov

Counsel for Petitioner, State of Wyoming

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of May, 2023, a true and correct copy of the foregoing was served upon the following via United States mail, first class, certified, return receipt requested:

U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Honorable Deb Haaland, Secretary
U.S Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Martha Williams, Director
U.S. Fish and Wildlife Service
1849 C Street, NW.
Washington, D.C. 20240

U.S. Attorney's Office
Attn: Civil Process Clerk
P.O. Box 668
Cheyenne, WY 82001-0068

Honorable Merrick B. Garland
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

/s/ Jay Jerde
Special Assistant Attorney General